



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS AIR FORCE MATERIEL COMMAND
WRIGHT-PATTERSON AIR FORCE BASE OHIO


9 NOV 2001

MEMORANDUM FOR SEE DISTRIBUTION

FROM: HQ AFMC/PK
4375 Chidlaw Road, Room S208
Wright-Patterson AFB OH 45433-5006

SUBJECT: DOD/IG Audit of Price Reasonableness Determinations

1. The attached SAF/AQC memorandum (Attachment 1) addresses the findings of a recent DOD/IG report and is forwarded for your review and action.
2. One area of concern addressed in the DODIG report is how contracting officers (COs) determine price reasonableness on competitive solicitations where only one response is received (see HQ AFMC/PK memo 26 Feb 01 and Attachment 2 for details on TINA exceptions). Based on these findings and recommendations, I request that you establish local procedures to independently review these situations to determine if adequate information exists to determine price reasonableness. This review should be made at a level above the CO and should occur prior to the COs making a determination of adequate price competition. Your pricing and/or policy staff may conduct this review. Ensure that these procedures are documented in your local operating instructions or process book. This policy should be established promptly and should remain in effect until such time as it has been incorporated into the AFMCFARS.
3. Pricing of contractual actions is one of a contracting professional's most important jobs. It is, in fact, our major "value-added" to the acquisition process. A number of resources (guides, tools, and training), identified in Attachment 3, are available for use. DCAA also provides a number of services that can also be utilized (Attachment 4). Attachment 5 stresses the importance of documenting price/cost analysis and negotiations. Please ensure that your contracting staff reviews the information in these attachments.
4. Also, please remind your contracting staff that when responding to urgent requirements, they should consider utilizing existing contracts, when available, in lieu of creating new contractual documents. The ConConnect tool, <https://www.conconnect.wpafb.af.mil/welcome/welcome.asp>, is an excellent method for identifying existing contracts.
5. If you have any questions on this subject, please contact my action officer, Mr. Bill Sain, HQ AFMC/PKPC, at DSN 787-3812 or bill.sain@wpafb.af.mil.


THOMAS S. WELLS, SES
Deputy Director of Contracting

Attachments:

1. SAF/AQC Memorandum, 28 Sep 01
2. TINA Exceptions, 26 Oct 01
3. Pricing Resources Available, 26 Oct 01
4. DCAA Services Available, 25 Oct 01
5. Importance of Documentation, 26 Oct 01

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DEPARTMENT OF AIR FORCE
WASHINGTON DC

OFFICE OF THE ASSISTANT SECRETARY

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PC
15 Oct

MEMORANDUM FOR ALMAJCOM-FOA-DRU (CONTRACTING)

28 SEP 2001


FROM: SAF/AQC
1060 Air Force Pentagon
Washington, DC 20330-1060

SUBJECT: DOD/IG Audit of Price Reasonableness Determinations (Report No. D-2001-129)

The DOD/IG recently completed an audit of the price reasonableness determination of contracting officers when cost or pricing data was not obtained to determine the adequacy of such determinations. The audit found issues regarding the acceptance of catalog prices without verification or discussions, inappropriate reliance on previous prices paid for comparison purposes, acceptance of unsupported costs and the inappropriate use of the exceptions to the Truth In Negotiations Act (TINA). The audit also cited concerns about the impact of urgent requirements on pricing and lack of requests for DCAA assistance. The audit concluded that in many cases we were not adequately documenting our price reasonableness determinations. The entire report can be reviewed at <http://www.dodig.osd.mil/audit/reports/fy01/01-129pt1.pdf>.

In order to address the concerns raised, we will be conducting a survey to determine the need for training on various aspects of pricing. In addition, we request the following actions be taken. First, we request that you mitigate some of the impact of urgent requirements by making people are aware of the various preexisting contracts that are available which may be able to fulfill these requirements and by ensuring that proper pricing is being done on these requirements. Second, ensure that contracting personnel are familiar with the various support services that DCAA can provide, such as verification of sales history and review of catalog sales, and encourage greater utilization of these services. Third, ensure that people are aware of and comply with FAR 15.403-1 regarding the exceptions to TINA. Fourth, conduct a pricing review on all competitive solicitations where only one response is received to ensure that adequate information exists to determine price reasonableness prior to contract award. Taking these actions, in addition to providing targeted training, should improve the overall health of pricing.

Should you any questions, please contact my action officer Karen Petering, SAF/AQCP her at (703) 588-7054 or email her at karen.petering@pentagon.af.mil.


TIMOTHY A. BEYLAND
Associate Deputy Assistant
Secretary (Contracting)
Assistant Secretary (Acquisition)

ATTACHMENT 2
FAR 15.403-1(B) EXCEPTIONS TO COST OR PRICING DATA REQUIREMENTS

*The following discussion is provided as general guidance only. Contracting officers (COs) should check the most current regulations (the FAR and all supplements) to find the most current details on the exceptions to cost or pricing data requirements. Portions of the following discussion are taken, almost verbatim from the FAR and its supplements. These portions will be shown in normal font. Additional comments will also be included and will be shown in Italics. Section titles and FAR (and supplemental) references will be shown in **bold font**.*

FAR 15.402 states that COs must purchase supplies and services at fair and reasonable prices. COs must analyze (or have someone else, a contract specialist or pricer, analyze) all offered prices to ensure that the resulting contract price is fair and reasonable. This analyst will typically require some sort of data to perform the required analysis. **FAR 15.402(a)(1) and (2)** provides an order of preference for the types of information to be used in a price/cost analysis. **FAR 15.402(a)(3)** indicates that COs should use every means available to ascertain whether a fair and reasonable price can be determined before requesting cost or pricing data.

The Truth in Negotiations Act (TINA), however, requires that cost or pricing data be obtained on award of a negotiated contract, or modification (to a sealed bid or negotiated contract) expected to be over \$550,000 (the TINA threshold). **FAR 15.403-4** states that the CO “must obtain cost or pricing data only if the CO concludes that none of the exceptions in **15.403-1(b)** applies.”

FAR 15.403-1(b) enumerates the four exceptions and **FAR 15.4031(c)** provide the standards to use for each of these exceptions. These exceptions, and the related standards, are discussed in the following paragraphs:

-
1. **Adequate Price Competition (APC)** - The CO must determine that prices agreed upon are based on adequate price competition or APC. APC exists if ***NOTE:** There are three different scenarios, shown below as (i), (ii), and (iii), that may constitute APC. Each of these is a stand-alone scenari; in other words, you do not need to have two or more scenarios to have APC*
 - (i) two or more responsible offerors, competing independently, submit priced offers and if
 - (A) Award will be made to the offer with the best value where price is a substantial factor in source selection; and
 - (B) There is no finding that the price of the otherwise successful offeror is unreasonable.

***NOTE:** Both (A) & (B) must be true for this to apply. If the CO decides that the price on of the otherwise successful offeror is unreasonable, the CO must support this finding by a statement of facts. This finding must then be approved at a level above the CO (this*

approval level has not been further defined by any of the FAR or supplements). Once this approval has been granted, this exception cannot apply. If none of the other exceptions apply and you cannot justify requesting a waiver (described later in this document), you must request cost or pricing data from the offeror.

- (ii) There was a reasonable expectation, based on market research or other assessment, that two or more responsible offerors, competing independently, would submit priced offers, even though only one offer is received and if—

- (A) Based on the offer received, the CO can reasonably conclude that the offer was submitted with the expectation of competition, e.g., circumstances indicate that –

- (1) The offeror believed that at least one other offeror was capable of submitting a meaningful offer; and

- (2) The offeror had no reason to believe that other potential offerors did not intend to submit an offer.

- (B) The CO must prepare a D&F stating that the price is based on APC and that the price is reasonable. This D&F must be approved at a level above the CO.

DFARS 215.403-1(c)(1)(B)(ii) states that the reasonableness of the prices awarded must be clearly established on the basis of price analysis. The various techniques of price analysis available for use are described at **FAR 15.404-1(b)**. ***NOTE:** This portion of the FAR requires that the CO perform a price analysis to determine the price to be fair and reasonable. The expectation of APC and the determination of price reasonableness in this situation are two separate actions. All AFMC contracting activities have been directed to create a process to review one-offeror situations to determine if adequate information is available for a determination of price reasonableness.*

See <http://www.safaaq.hq.af.mil/contracting/toolkit/part15/price/APC.htm> for additional information on adequate price competition. As always, your price analysis should be documented in the contract file. **AFFARS**

5315.402(c)(1)(ii)(B) requires that the approval of the required D&F be made by the Senior Center Contracting Official at all AFMC activities; or

- (iii) Price analysis clearly demonstrates that the proposed price is reasonable in comparison with current or recent prices for the same or similar items, adjusted to reflect changes in market conditions,

economic conditions, quantities, or terms & conditions under contracts that resulted from APC. **NOTE:** *This section requires a prior buy where the price reasonableness was based on APC and requires the CO to adjust that prior price to reflect any potential differences between the two situations. This analysis needs to be documented in the contract file.*

2. **Prices set by law or regulation** – These prices normally take the form of pronouncements of periodic rulings, reviews, or similar actions of a governmental body, or are embodied in the laws. Your contract file must include documentation on the basis for the agreed to prices.

3. **Commercial Items** – Any acquisition for an item that meets the commercial item definition at **FAR 2.101**, or any modification, as defined in paragraph 3(I) or (ii) of that definition, that does not change the item to a noncommercial item, is exempt for the requirement for obtaining cost or pricing data. **NOTE:** *Just because an item is commercial, you cannot accept the offered price on the basis of that commerciality. You must still perform some form of price analysis to determine the reasonableness of the contract price as well as document your analysis and any related negotiations.*

4. **Waivers** – The head of the contracting activity (HCA) may, without power of delegation, waive the requirement for submission of cost or pricing data in exceptional cases. DFARS 215.403-1(c)(4) states that DoD has waived the submission of cost or pricing data for the Canadian Commercial Corporation and its subcontractors as well as for nonprofit organizations on cost-reimbursement-no-fee contracts. AFFARS 5315.403-1(c)(4) provides some procedural guidance on submitting waivers.
NOTE: *Additional information on TINA waivers is at http://www.safaq.hq.af.mil/contracting/toolkit/part15/price/waiv_rev.htm
If none of the other exceptions apply, you must either obtain cost or pricing data, or request a waiver. All waiver requests must be submitted through HQ AFMC/PK.*

*Additional Information: The Pricing Advisory Tool (PAT) can assist contracting personnel in deciding if the exceptions apply and the types and quantity of data to request. It also contains additional information on TINA Waivers. The PAT is Excel spreadsheet-based and is available at <https://www.afmc-mil.wpafb.af.mil/HQ-AFMC/PK/pkp/pricing.htm>
You must always document (1) your thought process when deciding if an exception applies, (2) the methodology used to determine price reasonableness, and (3) any negotiations you undertake to arrive at the contract price.*

ATTACHMENT 3
PRICING RESOURCES AVAILABLE FOR
USE BY AFMC CONTRACTING PROFESSIONALS

There are quite a few resources (guides, tools, and training) available to assist contracting professionals as they prepare to perform price and/or cost analysis and related functions. This document provides a list of those resources available on the HQ AFMC/PK and SAF/AQC websites. A review of the various AFMC activity websites indicates that many AFMC activities have also developed various pricing-related resources for local use. The purpose of this list is to familiarize the reader with some of the resources available. This list is not all-inclusive, nor does it provide in-depth coverage of each resource. You can go to the appropriate website for more information.

AFMC-generated resources can be found at the following website: <https://www.afmc-mil.wpafb.af.mil/HQ-AFMC/PK/pkp/pricing.htm>.

PNM/PCM Guide: This guide provides guidance on how to correctly and completely document a negotiation or competition. It includes current policy, guidance and input from recent IG reports.

Economic Data: This web page provides the economic-related data shown below:

Prompt Payment Rate – used to calculate Cost of Money, interest on Claims and Terminations

Underpayment Interest Rate – Used for calculating interest on defective pricing and CAS non-compliance audits

WEFA – Information on and a link to the WEFA website which provides economic forecast data

Also includes: Links to the Nominal Discount Rate, Bureau of Labor Statistics, Davis-Bacon Act Rates, and Per Diem Rates

Software Shelf: This web page provides a variety of software tools designed to assist contracting professionals. These include:

Pricing Advisory Tool (PAT) – A newly developed tool based on the COPADAT model. The tool frames risk in five categories providing an advisory assessment of how much cost/price data to request in your acquisition.

CPIF Calculator & Graph – Cost Plus Incentive Fee calculator built on an Excel spreadsheet. This program can be used for calculating CPIF points to illustrate sharing arrangements.

Simple Interest Calculator – This Excel spreadsheet can be used for calculating interest for Defective Pricing, Claims, CAS noncompliance audits, and Terminations for Default.

EZ-Quant – This is the statistical Data used by DCAA that includes improvement curves, statistical functions, and sampling method. This links the user to the DCAA website.

Weighted Guidelines For Windows – Includes the latest version of the program to use for profit analysis and reporting. Note that this system will be replaced in the coming months.

Commercial Homepage: This page contains guidance, policy and training materials related to commercial item pricing, price analysis, and commercial acquisitions. It includes:

Commercial Business Approach Training - This is the training that was provided to the AFMC community in April – June 2000, training developed for the requirements community and delivered in the summer of 2001, and training given during the SYS 400 course.

Frequently Asked Questions – Includes information on Contract Type, Commercial Negotiations, and the TINA waiver process.

IG, GAO, Congressional – Contains information on recent IG and GAO reports related to commercial pricing.

Papers and Guidance – Includes a Commercial Acquisition Guide and a link to the Commercial Advocates Forum.

Market Research – Provides a link to the Market Analysis Home Page, Market Research Training, MR PoST, and several market research tools.

Contract Audit Follow-up/Defective Pricing Page: This page provides links to DoD Directive 7640.2, the PK Audit Reporting System (PARS) Users Guide, and the ASC Defective Pricing Procedures Guide.

Performance-Based Payments (PBP) Page: This page provides links to 19 sources of information on PBP, including the DoD User's Guide to PBP and the 26 February 2001 HQ AFMC/PK Memorandum on PBPs.

Voluntary Refunds: This page provides links to a variety of information related to the Voluntary Refund program.

Pricing & Financing Hot Links – This page contains links to websites that contain additional pricing- and financing-related information.

SAF/AQC-generated information can be found at <http://www.safaq.hq.af.mil/contracting/toolkit/part15/price/xpricing3.html>. This includes links to various interest rates, finance, payment issues, as well as:

Contract Pricing: Topics include
The Truth in Negotiations Act (TINA)
What is a fair and reasonable price?
Commercial Pricing
Parametrics
Pricing Links

Other Resources Available:

Contract Pricing Reference Guides - The Air Force Institute of Technology (AFIT) and the Federal Acquisition Institute (FAI) jointly prepared a five-volume set of Contract Pricing Reference Guides to guide pricing and negotiation personnel. The five guides are: I Price Analysis, II Quantitative Techniques for Contract Pricing, III Cost Analysis, IV Advanced Issues in Contract Pricing, and V Federal Contract Negotiation Techniques. These references provide detailed discussion and examples applying pricing policies to pricing problems. They are to be used for instruction and professional guidance. However, they are not directive and should be considered informational only. They are available via <http://www.acq.osd.mil/dp/cpf/pgv10/index.html>.

Air Force Knowledge Management Website – Includes the Market Analysis and Pricing Centers of Expertise at <https://afkm.wpafb.af.mil/ASPs/Market/Entry.asp?Filter=R> which provides a gateway to information, resources, and tools designed to assist acquisition teams pursue commercial acquisitions, develop price-based acquisition strategies, and prepare market research reports.

PREPARED BY HQ AFMC/PKPC, Mr. Bill Sain, 937-257-3812, DSN 787-3812, bill.sain@wpafb.af.mil
26 October 2001

ATTACHMENT 4

Available DCAA Services when Cost or Pricing Data is not Obtained

Although DCAA has long been known to provide audit services on cost or pricing data, we have also adapted to the new regulations of FARA and FASA. DCAA can provide assistance to contracting officers even when cost or pricing data is not obtained, such as commercial buys or when other than cost or pricing data has been submitted.

DCAA can provide many services in a commercial pricing situation. DCAA can provide such services as verification of sales history including similar items, verification of the item to an existing catalog or price list, and verification of historical data for an item previously not determined commercial that the offeror is now trying to qualify as a commercial item. Other information can also be obtained about customarily offered discounts as well as terms such as delivery, financing, and warranties. When other than cost or pricing data is submitted, DCAA is able to verify information to source records, review actual and negotiated contract unit price trends, as well as unit price trends from other programs. In any situation, DCAA can provide important information on the financial health of a company.

These services can be provided by, or coordinated by, the various Financial Advisors (FA) or Procurement Liaison Auditors (PLA) located at the various sites. A listing of the Air Force FAs and PLAs is located at the following website: <https://www.afmc-mil.wpafb.af.mil/HQ-AFMC/PK/pkp/pricing.htm> under DCAA Financial Analysts & Procurement Liaison Auditors.

ATTACHMENT 5
IMPORTANCE OF DOCUMENTATION
IN CONTRACT PRICING

In most cases, the documentation of contract pricing takes either the form of a Price Negotiation Memorandum (PNM) or a Price Competition Memorandum (PCM). **FAR 15.403-3** states that the CO "...shall document in the contract file the principle elements of the negotiated agreement." This section of the FAR continues to list information that the documentation "...shall include...." Additional information on/requirements for documentation can be found in the DFARS, AFFARS, and AFMCFARS. The AFMC PNM/PCM Guide is available at <https://www.afmc-mil.wpafb.af.mil/HQ-AFMC/PK/pkp/pkpc/pnmpcm.htm>

The PNM/PCM is meant to tell the story of how the final contract price was arrived at. This document is meant to be a stand-alone document, providing the reader (be it a later PCO, buyer, reviewer, and/or auditor, etc) to understand the basis for the price without having to dig through the rest of the contract file. It must detail the decisions made, analysis performed, negotiations conducted, and any other actions/facts/etc. that pertains to the to price. The exact content of the PNM/PCM will vary according to the nature of the contractual action being discussed. The typical rule is, as you get higher in dollar value, you need to increase the level of effort in pricing the action, and documenting the efforts undertaken.

Recent GAO and DoDIG audits make it very clear that we are not adequately documenting our pricing efforts. The auditors have been unable to read a PNM/PCM and follow the contracting officer's rationale in deciding what pricing approach to take, the analysis performed, etc. They make the assumption that if something is not covered in the PNM/PCM, then it did not happen. They also work under the assumption that if you do not include your rationale for decisions, then the decision is open to question.

PREPARED BY HQ AFMC/PKPC, Mr. Bill Sain, 937-257-3812, DSN 787-3812, bill.sain@wpafb.af.mil
on 26 Oct 2001